

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DANIEL GERARDO VIERA,
Plaintiff,
v.
NANCY A. BERRYHILL, Acting
Commissioner of Social
Security,
Defendant.

CASE NO. CV 18-7438 SS

MEMORANDUM DECISION AND ORDER

INTRODUCTION

INTRODUCTION

21 Daniel Gerardo Viera ("Plaintiff") brings this action seeking
22 to overturn the decision of the Acting Commissioner of Social
23 Security (the "Commissioner" or "Agency") denying his applications
24 for Disability Insurance Benefits and Supplemental Security Income.
25 The parties consented, pursuant to 28 U.S.C. § 636(c), to the
26 jurisdiction of the undersigned United States Magistrate Judge.
27 (Dkt. Nos. 11-13). For the reasons stated below, the Court AFFIRMS
28 the Commissioner's decision.

II.

PROCEDURAL HISTORY

4 On December 24, 2014, Plaintiff filed applications for
5 Disability Insurance Benefits and Supplemental Security Income,
6 pursuant to Titles II and XVI of the Social Security Act (the
7 "Act"), alleging a disability onset date of September 9, 2013. (AR
8 77-78, 151-60). The Commissioner denied Plaintiff's applications
9 initially. (AR 77-88). Thereafter, Plaintiff requested a hearing
10 before an Administrative Law Judge ("ALJ"), which took place on
11 August 14, 2017. (AR 34-52, 98-147). The ALJ issued an adverse
12 decision on September 8, 2017, finding that Plaintiff was not
13 disabled because there are jobs in the national economy that he
14 can perform. (AR 15-26). On June 29, 2018, the Appeals Council
15 denied Plaintiff's request for review. (AR 1-6). This action
16 followed on August 24, 2018.

III.

FACTUAL BACKGROUND

21 Plaintiff was born on December 24, 1973. (AR 153). He was
22 forty-three (43) years old when he appeared before the ALJ on
23 August 14, 2017. (AR 39). Plaintiff graduated from high school
24 and has one year of college. (AR 39). He is single and lives with
25 his mother. (AR 41, 153). Plaintiff last worked in May 2010 as a
26 warehouse manager. (AR 182-83). He alleges disability due to
27 bipolar disorder, obsessive-compulsive disorder (OCD), and
28 anxiety. (AR 182).

1 **A. Plaintiff's Statements and Testimony**

2

3 On March 16, 2015, Plaintiff submitted an Adult Function
4 Report. (AR 204-12). He asserted that his OCD affects his ability
5 to concentrate and focus on tasks. (AR 204, 208). His bipolar
6 disorder causes depression and hypersomnia. (AR 204-05). He
7 requires reminders to take care of personal needs and grooming.
8 (AR 206). Plaintiff rarely goes outside and does not drive. (AR
9 207). While he complains of being socially withdrawn, he is able
10 to enjoy social activities with friends and family. (AR 208-09).
11 Plaintiff contends that his mental impairments affect his ability
12 to talk, hear, see, complete tasks, concentrate, understand, and
13 follow instructions. (AR 209). He asserts that his medications
14 cause multiple side effects, including nausea, drowsiness,
15 dizziness, hypersomnia, and anorexia. (AR 211).

16

17 At Plaintiff's hearing, he testified that his medications
18 stabilize his mental impairments but cause drowsiness and
19 hypersomnia. (AR 39-40, 43-44). He has trouble concentrating and
20 staying focused. (AR 40). His mother drives him everywhere and
21 gets him to his appointments on time. (AR 41, 44). He seldom goes
22 shopping because he gets agitated, nervous, and frustrated around
23 other people. (AR 42). Plaintiff acknowledged last using
24 marijuana in 2012. (AR 38). He lost his driver's license after
25 being arrested for driving under the influence of marijuana. (AR
26 44).

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1 **B. Treatment History**

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3 Plaintiff began treating with Ernesto Cortez, D.O., in 2000.
4 (AR 185). In November 2013, Dr. Cortez noted that Plaintiff had
5 not been seen since 2011. (AR 273). Plaintiff requested medication
6 for anxiety and insomnia. (AR 273). He stated that Xanax had
7 worked well for him in the past.¹ (AR 273). He denied suicidal
8 ideations, thoughts, or plans. (AR 273). His current medications
9 included Abilify, Klonopin, and Prozac.² (AR 273). A neurological
10 examination was grossly normal. (AR 274). Dr. Cortez assessed
11 anxiety, stable on Alprazolam, and referred Plaintiff to outpatient
12 psychology. (AR 274). In December 2014, Plaintiff's bipolar
13 disorder was stable on Abilify, and his medications were continued.
14 (AR 269-70, 346-47). In May 2017, Dr. Cortez assessed Plaintiff's
15 bipolar disorder as stable. (AR 339-40).

16
17 Plaintiff began treating with Jorge Dubin, M.D., in December
18 2013. (AR 186). In February and March 2014, mental status
19 examinations were unremarkable, and Plaintiff denied any medication
20 side effects. (AR 298, 304). He was fully oriented, exhibited
21 normal self-perception, intact memory, mild concentration

22
23 ¹ Xanax (alprazolam) is a benzodiazepine that is used to treat
24 anxiety disorders, panic disorders, and anxiety caused by
depression. <www.drugs.com> (last visited June 4, 2019).

25 ² Abilify (aripiprazole) is an antipsychotic medication used to
26 treat schizophrenia and bipolar disorder. Klonopin (clonazepam)
27 is a benzodiazepine used to treat panic disorder and agoraphobia.
Prozac (fluoxetine) is a selective serotonin reuptake inhibitor
used to treat major depressive disorder and OCD. <www.drugs.com>
(last visited June 4, 2019).

1 impairment, and fair judgment and insight. (AR 304). Plaintiff
2 reported improvements in OCD symptoms. (AR 298). Dr. Dubin
3 diagnosed bipolar affective disorder, OCD, and a history of
4 polysubstance abuse. (AR 304). In May 2014, Dr. Dubin emphasized
5 that Plaintiff was doing well. (AR 297). Plaintiff denied mood
6 swings. (AR 297). A mental status examination was unremarkable.
7 (AR 297). Plaintiff's medications were continued. (AR 297). In
8 July 2014, Plaintiff exhibited moderate concentration deficits and
9 fair insight and judgment, but his mood, affect, psychomotor
10 activity, and thought process and content were all normal. (AR
11 295). In October 2014, Plaintiff reported doing well and denied
12 any mood swings. (AR 293). Seroquel helped him stay calm. (AR
13 293). A mental status examination demonstrated an anxious mood
14 but otherwise intact memory, organized thought processes, clear
15 thought content, and only mild concentration deficits. (AR 293).

16

17 In January 2015, Plaintiff reported doing better, being
18 slightly depressed but with no psychotic symptoms. (AR 291). The
19 mental status examination exhibited mild concentration deficits
20 and fair insight and judgment. (AR 291). In March 2015, Plaintiff
21 reported only rarely experiencing OCD symptoms. (AR 290). He was
22 depressed but otherwise doing well. (AR 290). A mental status
23 examination was unremarkable. (AR 290). Dr. Dubin continued
24 Seroquel, Abilify, and Prozac.³ (AR 290). In April 2015, Plaintiff

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26 ³ Seroquel (quetiapine) is an antipsychotic medication used to
27 treat schizophrenia and bipolar disorder. <www.drugs.com> (last
28 visited June 4, 2019).

1 exhibited an anxious mood but otherwise the examination was largely
2 normal. (AR 289).

3

4 On April 2, 2015, David K. Middleton, Ph.D., completed a
5 mental disorder questionnaire. (AR 281-87). He first treated
6 Plaintiff in December 2013. (AR 285). Dr. Middleton reported that
7 Plaintiff's grooming was "adequate but marginal," his mannerisms
8 "friendly but slightly odd," and his gait slow and deliberate. (AR
9 281). Plaintiff reported a history of OCD, depression, paranoia,
10 and mania since high school. (AR 281, 283). He described paranoia
11 ideation and generalized anxiety symptoms. (AR 282). On
12 examination, Plaintiff was oriented, his memory intact, and insight
13 and judgment were marginal. (AR 282). Plaintiff's intellectual
14 functioning, assessed with WAIS-III testing, was in the range of
15 average cognitive skills with no intellectual impairment. (AR
16 282). Plaintiff reported persistent paranoid delusions, but Dr.
17 Middleton found "no evidence of distortion in form of thought."
18 (AR 283). Dr. Middleton concluded that Plaintiff's mood swings
19 and delusions appear to be managed adequately with medication. (AR
20 283). Dr. Middleton diagnosed bipolar disorder and OCD and opined
21 that Plaintiff's condition is chronic, unlikely to improve. (AR
22 285).

23

24 In August 2015, Norma R. Aguilar, a board-eligible
25 psychiatrist, conducted a complete psychiatric evaluation on behalf
26 of the Agency. (AR 308-16). Plaintiff was appropriately dressed
27 and groomed, with normal posture and gait. (AR 308). Plaintiff
28 stated he has "obsessive compulsive disorder which I do rituals

1 and counting numbers and I also have bipolar depression." (AR
2 308). He reported nervousness, poor concentration, poor memory,
3 paranoid feelings, insomnia, anorexia, racing thoughts, and low
4 motivation. (AR 309). Plaintiff denied suicidal or homicidal
5 ideations. (AR 309). He reported some benefits from his
6 medications and monthly psychotherapy sessions. (AR 309).
7 Plaintiff acknowledged a history of substance abuse, including
8 alcohol, methamphetamine, and marijuana. (AR 310). Plaintiff is
9 able to bathe and dress without assistance and to handle his own
10 money. (AR 310). Plaintiff has good relationships with family
11 and friends. (AR 310).

12

13 On examination, Plaintiff was cooperative, with normal body
14 movements and eye contact. (AR 310). His mood was slightly
15 depressed, with labile affect and no psychomotor retardation. (AR
16 310). His thought process was normal without looseness of
17 association, thought disorganization, flight of ideas, thought
18 blocking, tangentiality, or circumstantiality. (AR 310).
19 Plaintiff's thought content was characterized by paranoid and
20 grandiose delusions. (AR 310). He reported obsessions and tactile
21 hallucinations. (AR 310). Plaintiff was alert, fully oriented,
22 with intact memory, concentration, and calculation. (AR 311).
23 Plaintiff's fund of information and intelligence and his insight
24 and judgment were within normal limits. (AR 311). Dr. Aguilar
25 diagnosed bipolar disorder, OCD, and polysubstance abuse, in
26 remission. (AR 311). She opined that Plaintiff has no limitations
27 in his ability to follow simple and detailed oral and written
28 instructions; to interact with the public, coworkers, and

1 supervisors; and to comply with work rules, such as safety and
2 attendance. (AR 312). Plaintiff is mildly limited in his ability
3 to respond to changes in a routine work setting and moderately
4 limited in his ability to respond to work pressures. (AR 312).

5

6 In December 2015, Plaintiff reported to Dr. Dubin that he was
7 feeling better, without any nervousness or anxiety. (AR 326). His
8 sleep was okay and his OCD under control without any side effects
9 from his medications. (AR 326). Other than a mild impairment in
10 concentration, a mental status examination was unremarkable. (AR
11 326). In April 2016, Plaintiff's psychomotor control, thought
12 process, thought content, memory, and concentration were within
13 normal limits. (AR 324). In October 2016, Plaintiff exhibited
14 moderate concentration deficits, anxious mood, and fair
15 insight/judgment but otherwise a mental status examination was
16 within normal limits. (AR 322). In May 2017, Plaintiff reported
17 worsening symptoms, but other than moderate concentration deficits
18 and poor insight/judgment, a mental status examination was largely
19 unchanged. (AR 318). Dr. Dubin noted a moderate impairment in
20 concentration, but Plaintiff had calm psychomotor activity, clear
21 thought content, and intact memory. (AR 318). Dr. Dubin diagnosed
22 OCD, major depressive disorder, and history of polysubstance abuse.
23 (AR 318). He prescribed fluoxetine, quetiapine and buspirone and
24 discontinued aripiprazole. (AR 318).

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1 **C. State Agency Consultants**

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3 On September 17, 2015, Robert Liss, Ph.D., a State agency
4 consultant, evaluated the mental health records and concluded that
5 Plaintiff's affective and anxiety disorders are severe impairments.
6 (AR 59). He opined that Plaintiff has a mild restriction of
7 activities of daily living, mild difficulties in maintaining social
8 functioning, and moderate difficulties in maintaining
9 concentration, persistence or pace. (AR 59). Dr. Liss concluded
10 that Plaintiff is moderately limited in his ability to understand,
11 remember, and carry out detailed instructions; maintain attention
12 and concentration for extended periods; work in coordination with
13 or in proximity to others without being distracted by them; and to
14 complete a normal workday and workweek without interruptions from
15 psychologically based symptoms and to perform at a consistent pace
16 without an unreasonable number and length of rest periods. (AR
17 61-62).

18
19 **IV.**

20 **THE FIVE-STEP SEQUENTIAL EVALUATION PROCESS**

21
22 To qualify for disability benefits, a claimant must
23 demonstrate a medically determinable physical or mental impairment
24 that prevents the claimant from engaging in substantial gainful
25 activity and that is expected to result in death or to last for a
26 continuous period of at least twelve months. Reddick v. Chater,
27 157 F.3d 715, 721 (9th Cir. 1998) (citing 42 U.S.C. § 423(d)(1)(A)).
28 The impairment must render the claimant incapable of performing

1 work previously performed or any other substantial gainful
2 employment that exists in the national economy. Tackett v. Apfel,
3 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C.
4 § 423(d)(2)(A)).

5

6 To decide if a claimant is entitled to benefits, an ALJ
7 conducts a five-step inquiry. 20 C.F.R. §§ 404.1520, 416.920. The
8 steps are:

- 9
- 10 (1) Is the claimant presently engaged in substantial gainful
11 activity? If so, the claimant is found not disabled. If
12 not, proceed to step two.
- 13 (2) Is the claimant's impairment severe? If not, the
14 claimant is found not disabled. If so, proceed to step
15 three.
- 16 (3) Does the claimant's impairment meet or equal one of the
17 specific impairments described in 20 C.F.R. Part 404,
18 Subpart P, Appendix 1? If so, the claimant is found
19 disabled. If not, proceed to step four.
- 20 (4) Is the claimant capable of performing his past work? If
21 so, the claimant is found not disabled. If not, proceed
22 to step five.
- 23 (5) Is the claimant able to do any other work? If not, the
24 claimant is found disabled. If so, the claimant is found
25 not disabled.

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1 Tackett, 180 F.3d at 1098-99; see also Bustamante v. Massanari,
2 262 F.3d 949, 953-54 (9th Cir. 2001); 20 C.F.R. §§ 404.1520(b)-(g)(1), 416.920(b)-(g)(1).

4

5 The claimant has the burden of proof at steps one through four
6 and the Commissioner has the burden of proof at step five.
7 Bustamante, 262 F.3d at 953-54. Additionally, the ALJ has an
8 affirmative duty to assist the claimant in developing the record
9 at every step of the inquiry. Id. at 954. If, at step four, the
10 claimant meets his or her burden of establishing an inability to
11 perform past work, the Commissioner must show that the claimant
12 can perform some other work that exists in "significant numbers"
13 in the national economy, taking into account the claimant's
14 residual functional capacity ("RFC"), age, education, and work
15 experience. Tackett, 180 F.3d at 1098, 1100; Reddick, 157 F.3d at
16 721; 20 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1). The Commissioner
17 may do so by the testimony of a VE or by reference to the Medical-
18 Vocational Guidelines appearing in 20 C.F.R. Part 404, Subpart P,
19 Appendix 2 (commonly known as "the grids"). Osenbrock v. Apfel,
20 240 F.3d 1157, 1162 (9th Cir. 2001). When a claimant has both
21 exertional (strength-related) and non-exertional limitations, the
22 Grids are inapplicable and the ALJ must take the testimony of a
23 vocational expert ("VE"). Moore v. Apfel, 216 F.3d 864, 869 (9th
24 Cir. 2000) (citing Burkhart v. Bowen, 856 F.2d 1335, 1340 (9th Cir.
25 1988)).

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v.

THE ALJ'S DECISION

The ALJ employed the five-step sequential evaluation process and concluded that Plaintiff was not disabled within the meaning of the Act. (AR 15-27). At step one, the ALJ found that Plaintiff has not engaged in substantial gainful activity since September 9, 2013, the alleged onset date. (AR 17). At step two, the ALJ found that Plaintiff's bipolar disorder, OCD, and history of drug abuse are severe impairments. (AR 17). At step three, the ALJ determined that Plaintiff does not have an impairment or combination of impairments that meet or medically equal the severity of any of the listings enumerated in the regulations. (AR 17-20).

15 The ALJ then assessed Plaintiff's RFC and concluded that he
16 can perform a full range of work at all exertional levels but with
17 the following nonexertional limitations: "noncomplex routine
18 tasks, no tasks requiring hypervigilance, not responsible for the
19 safety of others, no jobs requiring significant teamwork." (AR
20 20). At step four, the ALJ found that Plaintiff is unable to
21 perform any past relevant work. (AR 25). Based on Plaintiff's
22 RFC, age, education, work experience, and the VE's testimony, the
23 ALJ determined at step five that there are jobs that exist in
24 significant numbers in the national economy that Plaintiff can
25 perform, including hand packager, cleaner, and store laborer. (AR
26 25-26). Accordingly, the ALJ found that Plaintiff was not under a
27 disability, as defined by the Act, from September 9, 2013, through
28 the date of the decision. (AR 26-27).

VI.

STANDARD OF REVIEW

Under 42 U.S.C. § 405(g), a district court may review the Commissioner's decision to deny benefits. The court may set aside the Commissioner's decision when the ALJ's findings are based on legal error or are not supported by substantial evidence in the record as a whole. Garrison v. Colvin, 759 F.3d 995 (9th Cir. 2014) (citing Stout v. Comm'r, Soc. Sec. Admin., 454 F.3d 1050, 1052 (9th Cir. 2006)); Auckland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001) (citing Tackett, 180 F.3d at 1097); Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996) (citing Fair v. Bowen, 885 F.2d 597, 601 (9th Cir. 1989)).

15 "Substantial evidence is more than a scintilla, but less than
16 a preponderance." Reddick, 157 F.3d at 720 (citing Jamerson v.
17 Chater, 112 F.3d 1064, 1066 (9th Cir. 1997)). It is "relevant
18 evidence which a reasonable person might accept as adequate to
19 support a conclusion." Id. (citing Jamerson, 112 F.3d at 1066;
20 Smolen, 80 F.3d at 1279). To determine whether substantial
21 evidence supports a finding, the court must "'consider the record
22 as a whole, weighing both evidence that supports and evidence that
23 detracts from the [Commissioner's] conclusion.'" Auckland, 257
24 F.3d at 1035 (citing Penny v. Sullivan, 2 F.3d 953, 956 (9th Cir.
25 1993)). If the evidence can reasonably support either affirming
26 or reversing that conclusion, the court may not substitute its
27 judgment for that of the Commissioner. Reddick, 157 F.3d at 720-
28 21 (citing Flaten v. Sec'y, 44 F.3d 1453, 1457 (9th Cir. 1995)).

VII.

DISCUSSION

Plaintiff raises a single claim for relief. He contends that the ALJ impermissibly rejected his subjective symptom testimony. (Dkt. No. 22 at 5-12).

Plaintiff testified that he is unable to work due to deficits in concentration and focus, and being fearful, agitated, or frustrated when around other people. (AR 40-44). His medications have helped stabilize his symptoms but cause drowsiness and hypersomnia side effects. (AR 39-40, 43-44).

When assessing a claimant's credibility regarding subjective pain or intensity of symptoms, the ALJ must engage in a two-step analysis. Trevizo v. Berryhill, 871 F.3d 664, 678 (9th Cir. 2017). First, the ALJ must determine if there is medical evidence of an impairment that could reasonably produce the symptoms alleged. Garrison, 759 F.3d at 1014. "In this analysis, the claimant is not required to show that her impairment could reasonably be expected to cause the severity of the symptom she has alleged; she need only show that it could reasonably have caused some degree of the symptom." Id. (emphasis in original) (citation omitted). "Nor must a claimant produce objective medical evidence of the pain or fatigue itself, or the severity thereof." Id. (citation omitted).

If the claimant satisfies this first step, and there is no evidence of malingering, the ALJ must provide specific, clear and

1 convincing reasons for rejecting the claimant's testimony about
2 the symptom severity. Trevizo, 871 F.3d at 678 (citation omitted);
3 see also Smolen, 80 F.3d at 1284 ("[T]he ALJ may reject the
4 claimant's testimony regarding the severity of her symptoms only
5 if he makes specific findings stating clear and convincing reasons
6 for doing so."); Robbins v. Soc. Sec. Admin., 466 F.3d 880, 883
7 (9th Cir. 2006) ("[U]nless an ALJ makes a finding of malingering
8 based on affirmative evidence thereof, he or she may only find an
9 applicant not credible by making specific findings as to
10 credibility and stating clear and convincing reasons for each.").
11 "This is not an easy requirement to meet: The clear and convincing
12 standard is the most demanding required in Social Security cases."
13 Garrison, 759 F.3d at 1015 (citation omitted).

14

15 In discrediting the claimant's subjective symptom testimony,
16 the ALJ may consider the following:

17

18 (1) ordinary techniques of credibility evaluation, such
19 as the claimant's reputation for lying, prior
20 inconsistent statements concerning the symptoms, and
21 other testimony by the claimant that appears less than
22 candid; (2) unexplained or inadequately explained
23 failure to seek treatment or to follow a prescribed
24 course of treatment; and (3) the claimant's daily
25 activities.

26

27 Ghanim v. Colvin, 763 F.3d 1154, 1163 (9th Cir. 2014) (citation
28 omitted). Inconsistencies between a claimant's testimony and

1 conduct, or internal contradictions in the claimant's testimony,
2 also may be relevant. Burrell v. Colvin, 775 F.3d 1133, 1137 (9th
3 Cir. 2014); Light v. Soc. Sec. Admin., 119 F.3d 789, 792 (9th Cir.
4 1997). In addition, the ALJ may consider the observations of
5 treating and examining physicians regarding, among other matters,
6 the functional restrictions caused by the claimant's symptoms.
7 Smolen, 80 F.3d at 1284; accord Burrell, 775 F.3d at 1137. However,
8 it is improper for an ALJ to reject subjective testimony based
9 "solely" on its inconsistencies with the objective medical evidence
10 presented. Bray v. Comm'r of Soc. Sec. Admin., 554 F.3d 1219, 1227
11 (9th Cir. 2009) (citation omitted).

12

13 Further, the ALJ must make a credibility determination with
14 findings that are "sufficiently specific to permit the court to
15 conclude that the ALJ did not arbitrarily discredit claimant's
16 testimony." Tommasetti v. Astrue, 533 F.3d 1035, 1039 (9th Cir.
17 2008) (citation omitted); see Brown-Hunter v. Colvin, 806 F.3d 487,
18 493 (9th Cir. 2015) ("A finding that a claimant's testimony is not
19 credible must be sufficiently specific to allow a reviewing court
20 to conclude the adjudicator rejected the claimant's testimony on
21 permissible grounds and did not arbitrarily discredit a claimant's
22 testimony regarding pain.") (citation omitted). Although an ALJ's
23 interpretation of a claimant's testimony may not be the only
24 reasonable one, if it is supported by substantial evidence, "it is
25 not [the court's] role to second-guess it." Rollins v. Massanari,
26 261 F.3d 853, 857 (9th Cir. 2001).

27

28

1 The ALJ provided multiple, specific, clear, and convincing
2 reasons, supported by evidence in the record, to find Plaintiff's
3 complaints of disabling mental symptomology only partially
4 credible. (AR 18-19, 21-24). These reasons are sufficient to
5 support the Commissioner's decision.

6

7 First, the ALJ found that Plaintiff's statements were
8 internally inconsistent. (AR 18-19, 21). "[T]he ALJ may consider
9 inconsistencies either in the claimant's testimony or between the
10 testimony and the claimant's conduct." Molina v. Astrue, 674 F.3d
11 1104, 1112 (9th Cir. 2012); see Burch v. Barnhart, 400 F.3d 676,
12 680 (9th Cir. 2005) ("ALJ may engage in ordinary techniques of
13 credibility evaluation, such as . . . inconsistencies in
14 claimant's testimony"); accord 20 C.F.R. §§ 404.1529(c)(4),
15 416.929(c)(4). While Plaintiff asserted that his medications cause
16 side effects, including drowsiness and hypersomnia (AR 39-40, 43-
17 44, 211), he consistently denied medication side effects to his
18 treatment providers. In January, February and March 2014; December
19 2015; April, July and October 2016; and February and May 2017,
20 Plaintiff reported "no side effects" from his medications to Dr.
21 Dubin. (AR 298, 299, 304, 318, 320, 322, 323, 324, 326). Dr.
22 Cortez did not note any adverse reactions from Plaintiff's
23 medications. (AR 270, 272, 339, 342, 345, 355). Dr. Middleton
24 reported that Plaintiff "tolerate[s] well" his medications with
25 "mild benefit noted." (AR 285). At his consultative examination,
26 Plaintiff reported some benefit from his medications but did not
27 mention any serious side effects. (AR 309). Further, despite
28 testifying to having trouble getting along with others, Plaintiff

1 acknowledged being able to enjoy social activities with friends
2 and family. (Compare AR 42, with id. 208-09). Similarly, Plaintiff
3 told Dr. Aguilar that he has good relationships with family and
4 friends. (AR 310). Finally, despite Plaintiff asserting that he
5 is fearful, agitated, and frustrated around other people (AR 40-
6 44), the medical record demonstrates generally normal presentations
7 to treatment providers and examiners, without any mentions of fear,
8 agitation, or frustration. (AR 19, 264-367). All of these
9 inconsistencies diminish Plaintiff's credibility. (AR 18-19, 21).

10

11 Second, the ALJ found that Plaintiff exhibited a "good
12 response to prescribed treatment, which consisted of routine
13 medication management." (AR 18; see id. 19, 21). "Impairments
14 that can be controlled effectively with medication are not
15 disabling for the purpose of determining eligibility for SSI
16 benefits." Warre v. Comm'r of Soc. Sec. Admin., 439 F.3d 1001,
17 1006 (9th Cir. 2006). Plaintiff consistently reported that his
18 medications were helping him. In November 2013, he stated that
19 Xanax helped control his anxiety and insomnia. (AR 273-74). In
20 October 2014, he reported that Seroquel helped him stay calm and
21 denied any mood swings. (AR 293). In March 2015, Plaintiff
22 reported only rarely incurring OCD symptoms. (AR 290). He told
23 Dr. Aguilar that his medications and monthly psychotherapy sessions
24 were helpful. (AR 309). In December 2015, Plaintiff reported to
25 Dr. Dubin that he was feeling better, without any nervousness or
26 anxiety, and that his OCD was under control from his medications.
27 A good response to treatment supports an adverse credibility
28 finding. See Crane v. Shalala, 76 F.3d 251, 254 (9th Cir. 1996)

1 ("evidence suggesting that [the claimant] responded well to
2 treatment" supports an adverse credibility finding). Similarly,
3 Plaintiff's treating providers noted positive responses to
4 medication. In November 2013, Dr. Cortez assessed Plaintiff's
5 anxiety as stable on Xanax. (AR 274). In December 2014 and May
6 2017, Dr. Cortez assessed Plaintiff's bipolar disorder as stable
7 on Abilify. (AR 269-70, 339-40, 346-47). In May 2014, Dr. Dubin
8 emphasized that Plaintiff was doing well on his medications. (AR
9 297). In April 2015, Dr. Middleton concluded that Plaintiff's mood
10 swings and delusions were managed adequately with medications. (AR
11 283).

12

13 Finally, the ALJ found that the medical record "demonstrates
14 minimal evidence of significant mental status abnormalities." (AR
15 18; see id. 19, 21-24). While inconsistencies with the objective
16 medical evidence cannot be the sole ground for rejecting a
17 claimant's subjective testimony, it is a factor that the ALJ may
18 consider when evaluating credibility. Bray, 554 F.3d at 1227;
19 Burch, 400 F.3d at 681; Rollins, 261 F.3d at 857; see SSR 16-3p,
20 at *5 ("objective medical evidence is a useful indicator to help
21 make reasonable conclusions about the intensity and persistence of
22 symptoms, including the effects those symptoms may have on the
23 ability to perform work-related activities"). In November 2013, a
24 neurological examination was normal. (AR 274). In February and
25 March 2014, mental status examinations were largely normal:
26 Plaintiff was fully oriented, exhibited normal self-perception,
27 intact memory, mild concentration deficits, and fair judgment and
28 insight. (AR 304). In July 2014, Plaintiff exhibited moderate

concentration deficits and fair insight and judgment, but his mood, affect, psychomotor activity, and thought process and content were all normal. (AR 295). In October 2014, a mental status examination demonstrated an anxious mood but otherwise intact memory, organized thought processes, clear thought content, and only mild concentration deficits. (AR 293). In March and April 2015, Plaintiff exhibited an anxious mood but otherwise the mental status examinations were largely normal. (AR 289, 290). In April 2015, Dr. Middleton tested Plaintiff's intellectual functioning and concluded that his cognitive skills were normal with no intellectual impairment. (AR 282). While Plaintiff reported persistent paranoid delusions, Dr. Middleton found "no evidence of distortion in form of thought." (AR 283). In August 2015, Dr. Aguilar found that Plaintiff's mood was slightly depressed with labile affect but no psychomotor retardation. (AR 310). Plaintiff's thought process was normal; he was alert, fully oriented, with intact memory, concentration, and calculation. (AR 311). His fund of information and intelligence and his insight and judgment were within normal limits. (AR 311). In December 2015, other than a mild concentration deficit, a mental status examination was unremarkable. (AR 326). In April 2016, Plaintiff's psychomotor control, thought process and content, memory, and concentration were all within normal limits. (AR 324). In May 2017, Plaintiff exhibited moderate concentration deficits, anxious mood, labile affect, and poor insight/judgment, but calm psychomotor activity, clear thought content, intact memory, full orientation, normal self-perception, and normal speech. (AR 318).

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1 Plaintiff contends that the ALJ failed to acknowledge that
2 his treating physicians "noted impairment in concentration, mood,
3 and affect." (Dkt. No. 22 at 5). To the contrary, throughout his
4 opinion, the ALJ noted that on occasion, Plaintiff's symptoms
5 included mild to moderate concentration deficits, fair judgment
6 and insight, depressed mood, and labile affect. (AR 19, 21, 22,
7 23). Moreover, the ALJ found that Plaintiff's bipolar disorder
8 and OCD are severe impairments. (AR 17). While the "evidence"
9 cited by Plaintiff supports the various diagnoses he has received,
10 it does not support his allegations of debilitating symptoms. The
11 mere existence of these impairments does not provide any support
12 for the disabling limitations alleged by Plaintiff. Indeed, "[t]he
13 mere existence of an impairment is insufficient proof of a
14 disability." Matthews v. Shalala, 10 F.3d 678, 680 (9th Cir.
15 1993); see Key v. Heckler, 754 F.2d 1545, 1549 (9th Cir. 1985)
16 ("The mere diagnosis of an impairment . . . is not sufficient to
17 sustain a finding of disability").

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19 Furthermore, the ALJ did not completely reject Plaintiff's
20 testimony. (AR 21). Indeed, the ALJ gave less than full weight
21 to the State agency physician's assessment and the consultative
22 examiner's opinion because they did not have the benefit of
23 Plaintiff's hearing testimony. (AR 23-24) (ALJ finding "moderate
24 social restrictions based on the totality of the evidence,
25 including [Plaintiff's] testimony, as well as the treatment notes
26 received at the hearing level"). Based partially on Plaintiff's
27 subjective statements, the ALJ found that Plaintiff has moderate
28 limitations in understanding, remembering, or applying

1 information; in interacting with others; and with regard to
2 concentrating, persisting, or maintaining pace. (AR 18-19). The
3 ALJ accommodated Plaintiff's bipolar disorder and OCD and his
4 moderate difficulties in social functioning, in understanding and
5 applying information and in concentration, persistence, or pace by
6 restricting him to noncomplex routine tasks, no tasks requiring
7 hypervigilance, not responsible for the safety of others, no public
8 interaction, and limited teamwork. (AR 20). While these
9 limitations preclude Plaintiff from performing any past relevant
10 work, the VE opined that there are still jobs in the national
11 economy that Plaintiff can perform. (AR 25-26, 47-50).

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13 In sum, the ALJ offered clear and convincing reasons,
14 supported by substantial evidence in the record, for his adverse
15 credibility findings. Accordingly, because substantial evidence
16 supports the ALJ's assessment of Plaintiff's credibility, no remand
17 is required.

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VIII.

CONCLUSION

Consistent with the foregoing, IT IS ORDERED that Judgment be entered AFFIRMING the decision of the Commissioner. The Clerk of the Court shall serve copies of this Order and the Judgment on counsel for both parties.

DATED: June 6, 2019

/S/

SUZANNE H. SEGAL
UNITED STATES MAGISTRATE JUDGE

THIS DECISION IS NOT INTENDED FOR PUBLICATION IN WESTLAW,
LEXIS/NEXIS OR ANY OTHER LEGAL DATABASE.